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CHAPTER 9

# Beneficial Ownership Transparency



## Introduction

**The release of the Panama Papers and Paradise Papers in 2016 and 2017 shone a spotlight on the extensive use of anonymous companies for concealing corrupt practices and proceeds.** The sudden growth in publicly available information on this widespread practice has helped increase pressure on policy makers to address the abuse of anonymously-owned companies and other anonymous financial vehicles, and to take into account the role that they play in facilitating corruption and illicit financial flows. These mega-leaks exposed abuses that toppled heads of state and provided the information for law enforcement actions that (by conservative estimates) helped recover \$1 billion for taxpayers around the world.<sup>1</sup> As revealed by these leaks, anonymously-owned companies registered in tax havens were the getaway vehicles for tax evaders, criminals, and corrupt politicians. The most shocking insight from these public revelations is that these cases are merely the tip of the iceberg, being just a few of the disreputable clients of a small number of the law firms that provide these services.

**Regulatory loopholes in beneficial ownership disclosure requirements in one country have serious consequences globally because illicit financial flows (IFFs) are not constrained by national borders.** Common practices employed for laundering corrupt proceeds adapt and evolve to seek out jurisdictions where legal structures offer the greatest degree of privacy protection. Developing countries pay the heaviest price for these practices because of lost revenues or funds that are diverted as a result of fraud, tax evasion, and the illegal exploitation of natural resources.

**Estimates of the global volume of IFFs vary—precisely because the anonymity permitted by these services makes the problem hard to measure<sup>2</sup>—but most estimates put them in the trillions.** It is difficult to estimate the value of financial assets held in tax havens for the same reasons. A 2012 report by the Tax Justice Network estimated that between USD21 trillion and USD32 trillion worth of financial assets was held in tax havens.<sup>3</sup> The cumulative effects are devastating. In the Global South, IFFs are estimated to cause USD416 billion in tax losses, eroding service provision and trust in governance among the world’s most vulnerable populations.<sup>4</sup>

**Confronting corruption and the IFFs it generates requires an end to secrecy surrounding company ownership and an end to the abuse of anonymous legal structures for illicit financial gain.** This requires a shift in our thinking about confronting corruption. It means focusing on the financial centers and the jurisdictions that provide a “safe haven” for corrupt funds” in addition to strengthening the response to corruption in developing countries.

**Addressing anonymity is a key challenge.** A study by the World Bank’s Stolen Asset Recovery Initiative (StAR) showed in 2011 that this kind of anonymity is a core feature of grand corruption, with anonymously-owned companies used in 70% of cases studied. Since 2009, tax campaigners have also been drawing attention to the use of anonymous companies for tax abuse.<sup>5</sup> Secrecy is a well-established norm, however, and access by law enforcement and other interested parties to information about the beneficial owners of companies and legal entities remains a challenge.

**This chapter provides an introduction to beneficial ownership transparency.** It explains the concepts, reviews the existing global standards, identifies some of the early impacts, and illustrates the policy and technical challenges governments face in implementing reforms. It also describes the growing international commitment to action by governments and international policymaking bodies. Finally, it presents three case studies that chart the reform experience in Nigeria, Slovakia, and the United Kingdom, to illustrate how governments have tackled some of the common challenges.

## BOX 9.1

## What is a Beneficial Owner?

The term “beneficial owner” refers to the natural person, i.e. the real, living person, who ultimately owns or controls a company or another asset, or who materially benefits from the assets held by a company. The control can be realized either directly or indirectly, for example via professional intermediaries, nominees, or through other contractual agreements. Control can be exercised in a variety of ways: for example by holding – directly or indirectly – a controlling legal ownership interest or a significant percentage of voting rights; by having the ability to name or remove the members of an entity’s board of directors; or by holding negotiable shares or convertible stock.

### The difference between legal ownership and beneficial ownership

A beneficial owner describes an individual who ultimately controls assets held by a company, while the legal owner is the person (or corporate structure) that holds the legal title. In a majority of cases, the beneficial owner and the holder of the legal title of a company will be the same – if the legal owner is holding the title on his/her own behalf. In illicit practices, where there is an intention to hide the identity of the true owner of the asset, the legal owner whose name appears in a company registry, land cadastre or bank account will be different from the beneficial owner. Common techniques to separate legal and beneficial ownership in order to conceal the identity of the beneficial owner include, inter alia, use of complex, cross-border ownership chains and control structures, use of informal nominees (straw men) as company directors or shareholders, use of professional intermediaries for company administration.

The Financial Action Task Force (FATF) Standards, which set out global anti-money laundering and terrorist financing standards, distinguish between basic information about a company (which includes company name, registered office, proof of incorporation, list of directors, register of shareholders), and information about the beneficial ownership of a company). Corporate registries typically (at best) collect basic company information about legal owners of corporate entities. Increasingly, however, corporate registries, primarily in Europe, have started collecting and publishing information about beneficial owners as well.

For practical purposes, many countries adopt a numerical equity ownership threshold as a trigger for beneficial ownership disclosure requirements. The threshold used, for example, in the European Anti-Money Laundering Directives is 25% ownership interest, though some regulations require disclosure at lower thresholds of 5-20%, or even disclosure with no minimum threshold.

### How the corrupt abuse corporate structures and arrangements

In many corruption investigations, investigators must first uncover who actually benefits from the ownership of an asset – for example a company or real estate that is involved in a corrupt scheme – since the beneficial owner may be hidden behind multiple layers of shell companies or nominee company directors. Beneficial owners with criminal intent can conceal their identity through a variety of different mechanisms, for example: by creating complex and opaque legal ownership structures with corporate owners registered in jurisdictions with weak transparency regulations, by using nominees or informal proxies (e.g. family members or friends) as company directors or shareholders, or by going through professional intermediaries who protect the identity of their clients, either with complicity or unwittingly.

## Evolving global standards on beneficial ownership transparency

**Even before the release of the Panama Papers, international bodies were emphasizing the value of beneficial ownership information as a tool for law enforcement authorities.** Such information would help with investigations into corruption, money laundering and other financial crimes. The Financial Action Task Force (FATF), which sets global standards on anti-money-laundering, requires that countries “take measures to prevent the misuse of legal persons and trusts for money laundering or terrorist financing and to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.”<sup>6</sup> Since the revision of the Standards in 2012, which included much more detail on what this obligation entails and different mechanisms to obtain beneficial ownership information, a range of policy and regulatory approaches have been adopted by national authorities. These include requirements that companies collect their own beneficial ownership information and have it ready for inspection by law enforcement agencies (e.g. Hong Kong),<sup>7</sup> and the creation of centralized public registers that collect beneficial ownership information for all companies registered in a jurisdiction.

**Post-Panama Papers, the prospects for beneficial ownership transparency have been evolving steadily.** In 2014, the G20 Anti-Corruption Working Group endorsed High-Level Principles on Beneficial Ownership Transparency.<sup>8</sup> Governments and international policymaking bodies are building on the growing attention to this agenda to push increasingly progressive reforms. In late 2019, the U.S. House of Representatives voted to require companies to submit beneficial ownership information to the Treasury Department’s Financial Crimes Enforcement Network (FinCEN), a measure that gained bipartisan support in the US Congress.<sup>9</sup>

**Governments are using a range of approaches in requiring and managing the disclosure of beneficial ownership information to prevent the abuse of legal structures for criminal purposes.** These approaches vary in their reliance on public access or transparency as an accountability mechanism. The approach taken has depended in part on existing regulatory frameworks;

on the capacity of institutions to take on the task, including the verification of disclosed information; on the key priorities and vulnerabilities – related to money laundering or corruption – that governments are seeking to address with this tool; and in some cases on data protection and privacy laws in that country. These approaches include:

- **The central registry approach.** A government authority collects, records, and maintains information on the beneficial ownership of companies in a central registry. This information may be held by a corporate registry, the tax authority, the securities regulator, the Central Bank, the Financial Intelligence Unit, or the National Internal Audit Office. In some countries, the registry is accessible only to law enforcement and other government agencies (such as tax authorities), while other countries provide public access to the registry.
- **The “gatekeeper” or licensed intermediary approach.** The responsibility to collect and record beneficial ownership information lies with a professional service provider that is required to provide beneficial ownership information to authorities – either on request or on a routine basis. Intermediaries can be corporate service providers, financial institutions, notaries, lawyers, auditors, tax advisors, or real estate professionals. A critical feature of this approach is whether professional intermediaries are well-regulated, subject to licensing requirements and anti-money laundering rules, and subject to enforceable sanctions for misreporting. This model is more easily implemented in contexts where company registration already requires a licensed intermediary, as opposed to those where a private individual can set up a company directly. A risk-based application of this approach can focus on areas of the economy considered high-risk for corruption and money laundering, such as luxury real estate, luxury goods, public procurement, infrastructure, or extractives.
- **The company approach.** This is the most straightforward model in that it requires that

companies collect and hold information about their own beneficial owner(s) themselves and provide it to authorities when requested. However, evidence from FATF's mutual evaluations suggests that countries face challenges in ensuring that beneficial ownership information collected directly from companies is accurate and up-to-date. Reliance on this model alone, without any due diligence conducted by an independent party, is not considered effective in guaranteeing accurate beneficial ownership information, as corrupt beneficial owners of shell companies are unlikely to self-report their ownership interest to authorities or a government registry.

- **A combination of these approaches.** Some countries combine elements of these approaches to great effect (e.g., the Slovak case study below). A recent FATF report on Best Practices on Beneficial Ownership for Legal Persons, based on countries' mutual evaluations under FATF's peer review mechanism, emphasizes that a multi-pronged approach to beneficial ownership information disclosure and access has proven more effective in preventing the misuse of legal persons than any single approach.<sup>10</sup> Given that a vital element of effective beneficial ownership disclosure is to ensure the veracity of the disclosure, the ability of authorities to cross-check data across different sources or the requirement that licensed intermediaries vouchsafe the reliability of disclosed information<sup>11</sup> is clearly more useful than frameworks that rely on self-reporting by companies.

### There is a growing momentum towards providing public access to beneficial ownership information

**Civil society advocacy groups, thinktanks and watchdogs have been contributing to policy developments related to beneficial ownership disclosure.** They have also been working to help solve some of the technical challenges associated with establishing credible and effective public access disclosure systems, whether through centralized registers or other open data sources. Support for public access to beneficial ownership information gained significant ground at the 2016 UK Anti-Corruption Summit, where participating governments made commitments to collect beneficial ownership data and make it accessible to the public. Other developments in

this direction include the following:

- The UK and Ukraine were the first to launch national public registers of beneficial ownership information in 2016, with Slovakia following in 2017. Beneficial ownership registers can now be accessed by the public in Armenia, Denmark, Estonia, Poland, Portugal, Slovenia, Ukraine, Slovakia, the UK, and Sweden, though some of these registers impose access requirements, such as fees.
- The EU's Fifth Anti-Money Laundering Directive (AMLD5), passed in 2017, requires all EU member states to collect and publish beneficial ownership information on companies registered in their jurisdiction by late 2020.<sup>12</sup>
- The Extractive Industries Transparency Initiative (EITI) launched a pilot sectoral approach to beneficial ownership transparency, to help confront the high risk of corruption in the extractive sectors. The EITI standard now requires all 52 member countries to publish beneficial ownership data on extractive companies operating in their jurisdictions.
- The UK Parliament voted in 2018 to require overseas territories, including the British Virgin Islands and the Cayman Islands, to adhere to the same transparency standards as the UK's Companies House. In 2019, three Crown Dependencies, including Guernsey, Jersey and the Isle of Man, committed to meeting this standard by 2023.<sup>13</sup>
- Among members of the Open Government Partnership (OGP), the number of governments making commitments to beneficial ownership reforms is growing year by year, with 18 active commitments in early 2020.
- In 2019, the UK with OGP and OpenOwnership launched an initiative inviting governments to endorse a new 'global norm of beneficial ownership transparency' and a set of ambitious Disclosure Principles for Beneficial Ownership Transparency,<sup>14</sup> including a commitment to open data.<sup>15</sup> This 'Beneficial Ownership Leadership Group' includes Norway, Armenia, Mexico, Argentina, and Latvia, among others.

**This momentum has strong participation from the private sector as well.** In 2017, the B20

recommended that all G20 countries establish beneficial ownership action plans in a policy paper that described the benefits of transparency for business: chiefly, the market stabilization benefits of knowing who you're doing business with.<sup>16</sup> Another benefit for the private sector was emphasized in a recent European Public Sector Information Directive, which refers to beneficial ownership information as a high-value dataset that should be available free for access by the public, adding that open data can "promote the development of new services based on novel ways to

combine and make use of such information."<sup>17</sup>

**A wide variety of stakeholders now recognizes that the world cannot rely on mega-leaks to expose the scale and impacts of the abuse of corporate structures and arrangements.** Stakeholders also acknowledge that these practices need to be prevented as a matter of policy, including through public access to information, thereby leveraging the 'disinfecting effect of sunlight.'

## Emerging signs of impact

**While a framework for beneficial ownership transparency is urgently needed, it is not yet clear which tools or approaches may be the most effective.** There is a growing understanding that an effective framework for beneficial ownership transparency—meaning that the disclosure mechanism is accurate, up-to-date, and accessible—has the potential to offer tremendous value to governments, markets, and society in the fight against corruption. As an emerging policy area, however, there is an ongoing debate over how to achieve those objectives in different country contexts. The first public beneficial ownership registers are only a few years old, and it is too soon to meaningfully measure their impacts on preventing the abuse of corporate entities for criminal purposes. Ongoing analysis of the effectiveness of different tools and approaches will be needed.

**Despite implementation challenges, well-planned reforms are achieving encouraging results.** Implementing effective beneficial ownership disclosure poses significant technical and technological challenges, and most countries are struggling to implement FATF standards on beneficial ownership disclosure, particularly as it relates to the effectiveness of disclosure mechanisms.<sup>18</sup> Governments may also face resistance to reform, either because of vested interests against increased transparency, or because the potential gains are misunderstood, or because of the added burden on companies (and/or intermediaries) engaged in legitimate business activity. However, there are some promising experiences and signs of impact that should provide encouragement. These emerging signs of progress demonstrate that carefully calibrated policy

reforms to increase beneficial ownership transparency are an indispensable tool in the fight against corruption and financial crime:

### 1. Beneficial ownership transparency is a deterrent.

UK registered companies have been implicated in several recent money laundering scandals, including the so-called Azerbaijani and Russian Laundromats, involving up to £80 million in illicit proceeds.<sup>19</sup> When transparency advocates noticed a sharp increase in registrations of a unique type of UK corporate entity—Scottish Limited Partnerships (SLPs)—they brought this to the attention of the authorities. UK's beneficial ownership disclosure requirements had not initially applied to SLPs. Registrations of SLPs rose sharply after the disclosure requirements were introduced, revealing a loophole in the law. Lawmakers then moved to include SLPs in the disclosure requirements, and registrations plummeted. Transparency showed its value as a deterrent both in changing behaviors when the law was introduced, and in forcing corrupt actors to seek new avenues for concealing illicit proceeds after the loophole had been addressed.

### 2. Beneficial ownership disclosure helps in the enforcement of illicit enrichment laws.

A number of countries have illicit enrichment laws.<sup>20</sup> When paired with effective disclosure systems (asset declarations and beneficial ownership disclosure), these laws can be a powerful tool to detect and seize unexplained wealth. In financial centers, this tool can be useful to law enforcement, journalists and NGOs in exposing foreign public officials

(politically exposed persons) seeking to conceal, invest and enjoy illicitly acquired wealth abroad. Beneficial ownership transparency has played an important role in the successful use of a recently introduced illicit enrichment tool in the UK. Unexplained Wealth Orders (UWOs)<sup>21</sup> allow law enforcement to compel individuals suspected of having committed a crime, or Politically Exposed Persons (PEPs) with assets valued over £50,000 that are disproportionate to their income, to explain the source of the wealth, and to seize the assets if no reasonable explanation is provided. In the first use of a UWO, law enforcement used the UK's company register to establish that the wife of a jailed Azeri banker had been the beneficial owner of a UK company for one day in 2016. They subsequently used a UWO to investigate the assets and compel information from the owner. The company's assets, valued at £10.5 million, were subsequently seized by UK authorities.

**3. Beneficial ownership transparency helps detect and prevent conflicts of interest.** In 2019, Czech activists used the Slovakian beneficial ownership register to establish that the Prime Minister was the beneficial owner of a company receiving European Union subsidies. This is now under investigation by the European Commission for potential conflict of

interest. Beneficial Ownership Registers thus have a valuable role to play in the oversight of public procurement to prevent self-dealing by politically connected individuals.

**4. Beneficial ownership transparency is adding value to accountability data ecosystems.** Open data standards and advances in digital governance are making transparency reforms more impactful: open data is becoming more accessible, data systems are increasingly interoperable, and structured data enables the aggregation and linking of key datasets. In 2017, a coalition of transparency organizations launched the OpenOwnership Register, which collects and links beneficial ownership data from registers around the world, allowing users to “follow the money” across borders.<sup>22</sup> They are also supporting the development of the Beneficial Ownership Data Standard (BODS), a structured and standardized framework for representing beneficial ownership information, enabling beneficial ownership data to be connected to other key datasets, such as procurement or tax databases, locally and around the world. The BODS also enables more rapid scaling-up by governments of existing sectoral registers to systems with national coverage and supports the addition of new asset classes.

## Further reforms are in the pipeline

**These early signs of impact are highly encouraging, and some reformers are expanding their beneficial ownership reform to include new stakeholders and asset classes.** For instance, the UK will collect information on the beneficial owners of overseas companies that are purchasing real estate property in the UK in a special “overseas entities” register.<sup>23</sup> It will also include overseas companies that win government contracts, requiring them to provide their beneficial ownership information as a condition of the award of contract. Some UK lawmakers are also pushing for the beneficial ownership of trusts to be made public (it is now held in a register only accessible by law enforcement, as required by the EU's Fifth Anti-Money Laundering Directive).<sup>24</sup>

**These reforms, in the UK and elsewhere, are intended to have a number of impacts:** (i) to level the playing field for businesses bidding for government contracts by making it more difficult to conceal conflicts of interest using anonymously-owned companies; (ii) to prevent real estate (and other luxury goods) from being used as a destination for illicit funds; and (iii) to further close loopholes in the anti-money laundering framework. In a move that directly tackles the link between money laundering and corruption, some governments are also beginning to include beneficial ownership disclosure requirements in the income and asset declarations of public officials, thereby addressing a significant blind spot in these tools (see Chapter 8).

## BOX 9.2

## The Beneficial Ownership Data Standard (BODS)

Legal and beneficial ownership information consists of data about individuals, companies, and other legal entities and arrangements, and data about the relationship between them. Effectively identifying these elements requires a range of data points. To make this information open and accessible requires that the data be published in an open format that is standard across jurisdictions.

A group of experts in anti-money laundering, company data, and data standardization have developed a tool that meets these requirements. This data tool is intended to help policy makers design beneficial ownership disclosure systems that fulfil the accountability goals of the disclosure requirement while balancing data protection and privacy considerations. The Beneficial Ownership Data Standard (BODS) is a framework for representing information about people, companies, and relationships as structured data, in a standardized format that can be replicated across countries and systems. The BODS expresses this information as statements that can be linked together into a “claim about beneficial ownership made by a particular source at a particular point in time.” The necessary elements to identify a beneficial ownership relationship are summarized in the table below.

The Beneficial Ownership Data Standard includes the following elements:

| Data about individuals   | Data about companies  | Data about relationships   |
|--|---|--|
| <ul style="list-style-type: none"> <li>• Name</li> <li>• Official identifiers, like tax ID</li> <li>• Nationalities and tax residencies</li> <li>• Date and place of birth</li> <li>• Place of residency and contact address</li> <li>• Whether they are a politically exposed person</li> </ul> | <ul style="list-style-type: none"> <li>• Name</li> <li>• Official identifiers, like official registration numbers</li> <li>• Jurisdiction in which the company is registered</li> <li>• Founding and dissolution date</li> <li>• Address</li> </ul> | <ul style="list-style-type: none"> <li>• The type of relationship, e.g. shareholding, voting rights</li> <li>• The level of interest, e.g. percentage of shares held, and whether it's held directly or indirectly through another entity</li> <li>• Start and end date of the relationship</li> </ul> |

The complete data standard can be found at: <https://standard.openownership.org/en/v0-2-0/index.html>

Across all categories of data, it should be clear to users if a piece of information is missing, and why it is missing—for instance, that it was not reported, or that the company is exempt from reporting. Missing data is also important information, and may raise a red flag to reviewers or law enforcement, for instance, if a company of interest has failed to adequately report its beneficial ownership, or if a company of interest has not updated a beneficial ownership disclosure for a long time. Statements should also come with certain metadata—data about data—that enables users to understand when the statement was made and where it originated. That way, users can tell if the information is recent and from a reliable source.

## Implementing beneficial ownership transparency: Common challenges but different paths to reform

Even if many policy makers are no longer asking whether to implement beneficial ownership transparency, many questions are being asked about how to do it well. Governments face common challenges when implementing beneficial ownership transparency reforms. These include:

1. **The need for effective means of verifying disclosed information.** The criminal and corrupt have every incentive to lie to preserve their anonymity and have developed increasingly sophisticated techniques to elude changes in disclosure obligations. The usefulness of any registry that holds beneficial ownership information—whether it is publicly accessible or only accessible to national authorities—will succeed or fail based on the veracity and timeliness of the information it holds. Registries that operate on the basis of self-reporting by companies are particularly unreliable in this respect. Further, corporate registries in many countries are archival in nature and not equipped to cross-check or verify beneficial ownership information submitted to them by companies; and certainly unable to do so in real time, as such information by its nature is much harder to corroborate than basic company information.
2. **Winning political support and maintaining the momentum of early efforts.** Beneficial ownership transparency is a reform that touches many stakeholders and may involve multiple government agencies and areas of law. While global standards and initiatives can provide a platform and opportunity for reformers to push for the creation of disclosure systems, incremental approaches may be needed to sustain momentum and scale up transparency tools over time.
3. **The complex legislation and technical requirements involved in setting up an effective beneficial ownership disclosure system.** Effective mechanisms for disclosing and verifying beneficial ownership information require adequate regulation of registries, a mechanism for reporting discrepancies, and enforceable sanctions for misreporting. Further, effective beneficial ownership transparency reforms rely on technologies that enable a range of users and stakeholders to engage with the resulting data. Reformers thus need to get stakeholders engaged in developing a “data driven” approach to the design of policies and information platforms.
4. **Balancing privacy and transparency.** Beneficial ownership data incorporates identifying information about individuals. Reformers will need to balance the objectives of disclosure with growing obligations to protect personal data.
5. **Balancing fighting corruption and ease of doing business.** Disclosure obligations and verification mechanisms impose administrative burdens on companies and, in the “gatekeeper” model, on professional intermediaries as well. Careful policy design requires striking a balance between the sometimes-competing objectives of fighting corruption and enhancing the ease of doing business. While the speed of company incorporation is rewarded as an indicator of the ease of “Doing Business” it is increasingly a risk factor in the abuse of anonymous company structures.<sup>25</sup>
6. **Tailoring the approach to an understanding of the risks.** Corruption risks are different in every country and are continually evolving. An assessment of the risks should inform decisions about approaches to beneficial ownership transparency systems.<sup>26</sup> The FATF’s 40 Recommendations (2012) require all jurisdictions to identify and assess the money laundering/terrorist financing (ML/TF) risks for their country and adopt a risk-based approach to mitigating risks. This approach extends to ensuring beneficial ownership transparency and preventing the misuse of companies and trusts. The value of beneficial ownership transparency extends beyond addressing AML/CFT risks to include self-dealing by connected elites and the capture of public funds and contracts by connected firms. These risks need also to be considered in the design of beneficial ownership disclosure systems.

## BOX 9.3

## Key Data Questions for Policy Makers to Consider

### Embedding Data Quality Considerations in Policy Design

The impact of beneficial ownership transparency reforms relies on the use of the ensuing data by law enforcement, procurement agencies, tax authorities, and civil society. The data must therefore be reliable, detailed, and useful (Box 9.2 explains the Beneficial Ownership Data Standard). Considerations about data reliability and the needs of data users must therefore be at the heart of policy design. This means that determinations about what data can and will be available, where, and in what format need to be made while drafting laws and regulations, as these are often hard to adapt later.

Some jurisdictions have approached this challenge by expressing principles in the legislation and leaving more specific requirements about data and data quality to the supporting regulations. Regulations are easier to change, meaning that governments can learn and adapt from early implementation experiences. These considerations are particularly important given that this is still a new policy area and norms and best practices relating to high-quality beneficial ownership data are only just emerging and have yet to be standardized. One of the goals of the UK-led Beneficial Ownership Leadership Group is to establish and standardize these norms through a set of Disclosure Principles based on OpenOwnership's "Five characteristics of effective beneficial ownership data" <https://www.openownership.org/uploads/oo-characteristics-effective-bo-data.pdf>. In designing effective policies, the following questions may need to be answered:

### Beneficial Ownership Information: Data Questions that Underpin Policy Design

- What types of legal entity and natural persons will be covered by the policy?
- What format will the data be published in, and what will be the access levels for the public?
- What definition of beneficial ownership is being used? What means and percentage of control of legal entities will be covered by the disclosure requirement?
- Will there be a threshold of control that shareholders or directors must cross in order to be considered beneficial owners? How will this data be represented?
- Will intermediate companies (between the beneficial owner and the disclosing company) be disclosed?
- How will historical data, about past beneficial owners of companies, be stored and published?
- Are there reliable identifiers that can be used for legal entities and natural persons?
- What will be the requirements on companies to submit and update beneficial ownership information, and how will compliance be ensured?
- What sanctions will be put in place for non-compliance against the beneficial owner and/or legal entity for failing to declare, or declaring false information?
- What steps will be taken to verify the information that is submitted, and analyze submissions to identify suspicious entries for investigation?

As the list above illustrates, beneficial ownership transparency may also require changes to existing areas of law. OpenOwnership's Policy Review Tool is intended to help reformers identify relevant policy areas where changes may be necessary: <https://www.openownership.org/uploads/oo-beneficial-ownership-policy-reviewer.pdf>

**7. Ensuring effective enforcement of sanctions for violations.** A 2019 analysis of public data in the UK's Companies House registry shows that a lack of systematic verification of self-reported data, combined with a lack of enforcement of sanctions for companies that don't comply or that report incorrect information, leads to data quality issues that undermine the effectiveness of the registry.<sup>27</sup>

**8. Increased transparency can have unintended consequences.** While increased transparency is a vital element of accountability measures, well-intentioned policy reforms can have unintended consequences. Transparency regulations should be designed with the expectation that criminals will react swiftly and exploit any regulatory loopholes

or accountability blind spots to evade detection of their illicit activities. Law enforcement officials who routinely rely on cross-border cooperation to obtain beneficial ownership information from foreign authorities are concerned that the introduction of public registries without proper regulation, systematic verification mechanisms, and sanctions enforcement would simply prompt criminals to develop more sophisticated concealment techniques, or move their money elsewhere, thereby increasing the scale of the challenge that beneficial ownership transparency seeks to address.

Approaches to addressing these common challenges are explored in the case studies and Box 9.3.

## Nigeria: Incremental reforms by leveraging existing initiatives and institutions

**Beneficial ownership transparency requires action by governments to help solve a problem that is global in scale.** Existing international commitments and initiatives thus provide a helpful springboard for launching domestic reforms. The most prominent platforms for this policy agenda are the Open Government Partnership (OGP) and the Extractive Industries Transparency Initiative (EITI). These platforms encourage implementers to meet baseline anti-money laundering and tax transparency standards (the FATF Standard<sup>28</sup> and the Standard set out by the Global Forum on Transparency and Exchange of Information for Tax Purposes<sup>29</sup>) and to surpass them. They also provide support to governments in meeting these goals. OGP has partnered with OpenOwnership to provide technical assistance to member countries in meeting beneficial ownership-related commitments under Open Government National Action Plans. EITI is supporting governments to meet disclosure commitments in the extractive sectors.

### Implementation of Nigeria's commitment to transparency began at the sectoral level

**A number of countries with large extractive**

**sectors are undertaking beneficial ownership transparency as part of their EITI commitments.<sup>30</sup>**

Introducing this requirement at the sectoral level first, by collecting data on companies that own extractive licenses, provides a useful testing ground for the policy, procedures and technology required. Nigeria is a good example of this approach, despite having embraced a far more ambitious scope at the outset. At the London Anti-Corruption Summit in 2016, Nigeria committed to implementing a fully public central beneficial ownership register, reiterating this commitment in both their EITI beneficial ownership roadmap and their 2018 OGP National Action Plan. This reform found support at the highest levels of government; in 2017, the Vice President noted that the government expects this reform to benefit society and business too, "not only from the better business climate that results when governments better serve their citizens but also from knowing who they are doing businesses with or competing against."<sup>31</sup>

**Nigeria's EITI multi-stakeholder group (NEITI) set in motion a plan to deliver beneficial ownership transparency for the oil, gas, and mining sectors.**

NEITI worked with regulators in Nigeria's Mining Cadastral Office and Department of Petroleum Resources to include a beneficial ownership disclosure requirement in sectoral regulation.<sup>32</sup> They developed

template forms and procedures and have since been supporting companies to comply. While EITI Nigeria is still working to fulfill its EITI commitments,<sup>33</sup> this experience has helped pave the way for scaling up disclosure requirements more broadly and incrementally.

### Nigeria's initial steps along the reform path

**Beneficial ownership requirements have since been introduced as part of a large bill reforming the private sector (the 2018 Companies and Allied Matters Repeal and Re-enactment Act), which passed both houses of Parliament in 2019.** Embedding the beneficial ownership disclosure requirement within an existing institution—the Corporate Affairs Commission (CAC)—is a practical measure that is helped by the fact that this move coincides with the CAC's reform and modernization of its data systems and online reporting tools. The CAC will be tasked with collecting beneficial ownership information for all 3.1 million Nigerian companies, and to make that information publicly available.<sup>34</sup> A further important step in this incremental reform path will then be to link this disclosure data to the oversight of public procurement and to support the use of the data by the relevant authorities and interested civil society actors.

Stakeholder engagement is a vital piece of the reform process since beneficial ownership transparency reform touches on a wide range of policy areas. The CAC will be supported in engaging stakeholders as part of Nigeria's Open Government Action Plan.

### Lessons learned

**Nigeria has a long way to go before being able to show progress in beneficial ownership transparency.** However, the initiation of the reform makes Nigeria a relevant illustration of how reforms that are politically and technically challenging can be introduced by leveraging international commitments and policy platforms, and by building on existing institutional frameworks. The need for new legislation, institutions and resources can be significant stumbling blocks for many countries. Scaling up these reforms is greatly facilitated when the data is collected and published from the outset in a structured, machine readable format, allowing each new data system to leverage existing data, thereby also reducing the compliance burden on users, and ensuring better data quality. Datasets can then be compared to uncover inconsistencies or red flags and to identify reporting hurdles due to existing policy constraints or the experiences of users.

## Slovakia: Verifying the true owners of companies doing business with the State

**Slovakia was among the first countries to implement beneficial ownership transparency in public procurement.** Civil society groups called for a beneficial ownership register in response to long-suspected corruption and conflicts of interest in the award of public contracts, and following public outrage after the restructuring of a road construction company threatened to leave thousands of workers unpaid.<sup>35</sup> The so-called Anti-Letterbox Act was passed in 2017.<sup>36</sup> It requires that companies wishing to either compete for government contracts, receive funds from the State or the EU, or obtain an extractive sector license must first register as a Partner of the Public Sector in a registry

created for that purpose.<sup>37</sup> The Register of Public Sector Partners is administered by a District Court on behalf of the Ministry of Justice. Slovakia's approach differs from disclosure systems in other countries in many ways. It is particularly instructive because of the steps Slovakia has taken to ensure the veracity of reported information.

**International standards on beneficial ownership transparency, including FATF and the EU Anti-Money Laundering Directive, require that beneficial ownership data be accurate and verified.** This poses an obvious challenge: where anonymity is being used

to conceal illicit practices, the incentives to lie are very strong. Verifying beneficial ownership information is a technical challenge (how can one verify a disclosure for which no other official record exists?) and administratively difficult (who verifies, when, how often, and against what thresholds?).

### Slovakia makes “authorized persons” responsible for the verification of beneficial owners

**The approach taken in many countries is to require that companies and other legal entities self-report their beneficial owners, leaving the task of verifying the veracity of the disclosure to the authority administering the register, or in some cases to a third party.**<sup>38</sup> In Slovakia, companies are required to register as a Partner of the Public Sector through “authorized persons,” such as attorneys, notaries, banks, or tax advisors, who must have a registered place of business in the Slovak Republic, and no connection to the firm. The authorized person submits an application to the registry on behalf of the firm and is required to attach a verification form demonstrating that they have authenticated the identity of the beneficial owners (this includes a description of the ownership and management structure of the firm). The registry can object to incomplete applications, with an explanation of the shortcomings, and request additional information. “Authorized persons” are responsible for submitting changes to a registration; they must also re-authenticate the beneficial owner(s) annually while the contract or financial relationship with the State is in effect.

**While the requirement that firms engage an “authorized person” to register them as a Partner of the Public Sector carries a cost for firms, this approach to authentication helps address the challenging (and costly) task of verification for the public sector.** A noteworthy aspect of the Slovakian approach is in making the “authorized person” jointly liable for the veracity of the disclosure, in that they act as the guarantor of fines levied against companies that have misreported, unless they can prove they acted with “professional diligence.”<sup>39</sup> The system thus leverages the potential reputational and financial risk for legal professionals as a way of shoring up the objectives of the system: to establish the true owners of companies doing business with the State.

### The public can query the veracity of the data

**Free public access is another cornerstone of Slovakia’s approach to verifying data.** Anyone can submit a claim establishing reasonable doubt as to the veracity of a disclosure to the registration authority in the District Court. If the Court finds the query reasonable, it holds a proceeding with the goal of verifying the data. Under Slovakian law, the Partner of the Public Sector is required to submit evidence that the beneficial ownership information is correct. If the evidence is unsatisfactory, the registering authority can fine the company, remove it from the register, and cancel financial arrangements or contracts with the government.

### Lessons learned

**Slovakia has reversed the burden of proof for verifying beneficial ownership, shifting the cost of verification from the government to companies.** Over 70 investigations have been conducted since the register was launched, one of which produced the first fine ever levied against a company for misreporting beneficial ownership.<sup>40</sup> Five companies have chosen to end contracts with the government rather than disclose their beneficial ownership. The Slovakian approach is intuitive in many ways: it provides incentives for authorized persons to authenticate or correct disclosures, and provides greater confidence to the users of the data and to Slovakian civil society that the system is credible and effective in deterring the abuses that gave rise to the widespread demand for reform.

## United Kingdom: Balancing transparency and privacy

### Critics of beneficial ownership registers have justifiable concerns about the implications for data protection and privacy.

Beneficial ownership information includes identifying data about individuals, most of whom may be using companies responsibly and would prefer not to have their corporate interests exposed. Champions of public data respond that the right to privacy is not absolute and has been limited in many cases, particularly when public safety or national security is at stake.<sup>41</sup> International law recognizes that limitations on expectations of privacy can be necessary to achieve legitimate policy aims. Stemming corruption and illicit financial flows is clearly a legitimate policy goal. Disclosure systems need to find a balance between the accountability goals of transparency tools and rapidly evolving concerns related to data privacy in the digital age. Transparency, when implemented responsibly, is fully compatible with data protection laws.

### This is true even in contexts of strict data protection laws, such as the EU's General Data Protection Regulation (GDPR).

The GDPR gives data subjects rights over data about them, and requires entities using personal data—data processors—to get their consent to do so. However, there are certain exemptions to this requirement, one of which is when there is a regulatory requirement to collect and process data. This would be the case in any jurisdiction that requires beneficial ownership disclosure. In other words, implementers will not be legally blocked from implementing beneficial ownership transparency for privacy reasons; instead, they should consider privacy as a *principle* and *responsibility* they must take into account in their implementation. A local privacy impact assessment can help to identify any potential harm and suggest mitigating actions that the government can take.

### The UK implements beneficial ownership reforms while paying due regard to privacy concerns

**Beneficial ownership reforms have been championed in the United Kingdom at the highest levels of government.** This resulted in an amendment to the UK's Companies Act to require disclosure from

all UK registered companies (the Small Business, Enterprise and Employment Act of 2015). In the UK, beneficial owners are called “Persons of Significant Control” (PSCs), and their data is held and published by Companies House in a fully public open data format. Currently, Companies House has data on over 4 million companies, associated with millions more beneficial owners.

**The UK has demonstrated that it is possible to approach the matter of privacy with nuance, offering transparency while mitigating its risks.** It has done this in two ways:

- Publishing enough personally identifying information to distinguish between beneficial owners and officers, while withholding sensitive information (birthdate and residential address) for access by law enforcement for official purposes only. Public access is only given to month and year of birth and a registered address for correspondence.
- Allowing beneficial owners with privacy concerns to apply to have their information removed from the register. This process is rule-governed and permits exemptions under specific conditions unique to the UK context; for instance, some companies are exempted because they fear their businesses will be the target of protests.<sup>42</sup>

### Perhaps surprisingly, the UK's exemptions process has not been widely popular.

Out of millions of registered beneficial owners in the UK, only around 300 have applied to have their information removed, and only 30 of these applications have been granted. It is important to note also that the UK is subject to the GDPR, one of the world's most stringent data protection regulations. While the UK provides a useful example, getting the balance right means that every jurisdiction should conduct a privacy impact assessment for their context and design an exemptions process to fit.

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Global Financial Integrity (GFI) estimates that developing countries lose almost USD one trillion per year through illicit financial flows of all kinds—a number that is perhaps most usefully seen as suggesting the scale of the phenomenon. The Economic Commission for Africa of the United Nations (ECA) has used trade statistics to estimate that between 2001 and 2010 African countries lost up to US \$407 billion from trade mispricing alone.
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- FATF (2019). Best Practices on Beneficial Ownership for Legal Persons. <https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>.
- Slovakia, Jersey, Spain, and Uruguay have frameworks that rely on licensed professional intermediaries that can be held liable for reporting incorrect information to the registry.
- The directive also requires states to create a register of beneficial ownership of trusts that is directly accessible to authorities and “obliged entities” subject to AML rules (financial institutions, lawyers, tax advisors) and accessible upon request to others who can demonstrate a “legitimate interest” tied to the directive’s purpose of combating money laundering.
- BBC (2019). Secret company registers in Crown Dependencies to be made public. <https://www.bbc.com/news/world-europe-guernsey-48677083>.
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- Open data means that it is freely downloadable, searchable, and reusable by the public, without a fee, proprietary software, or the need for registration. Open data is also machine-readable, which means it can be read and processed by computers.
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- The FATF standard for evaluating the effectiveness of Beneficial Ownership Transparency is Immediate Outcome 5 (IO. 5): “Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.” According to an analysis of FATF mutual evaluations conducted by the World Bank, ratings of effectiveness related to beneficial ownership transparency were among the poorest overall, with 90% of assessed countries rated as having either low or moderate effectiveness and not a single country achieving a high level of effectiveness. This analysis includes 97 Mutual Evaluation Reports (MERs) from FATF and FATF-style Regional Bodies (FSRBs).
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- Beneficial ownership disclosure of trusts is more challenging to regulate and enforce in part because the control structure of trusts is more complex than for companies, and because of the different legal purpose and nature of trusts in different jurisdictions. FATF, for instance, has different disclosure requirements for companies (and other legal persons) and trusts. There are also initiatives to support the creation of an international standard for the disclosure of ownership of all asset classes that are susceptible to being used to move and conceal illicit wealth or evade taxes (real estate, luxury goods, etc). See for example: <https://www.taxjustice.net>.
25. The World Bank's annual Doing Business report compares countries' business regulations with a focus on promoting entrepreneurship. <https://www.doingbusiness.org/en/data/exploretopics/starting-a-business>. On the risks associated with high speed company incorporation, see: Medium (2018). Open Corporates, Fireflies and algorithms — the coming explosion of companies. <https://medium.com/@opencorporates/fireflies-and-algorithms-the-coming-explosion-of-companies-9d53cdb8738f>.
26. The World Bank assists countries in conducting National Risk Assessments (NRAs) to help them comply with FATF Recommendations. Over 100 countries have used the WB NRA approach since 2015. The World Bank is updating its NRA tool with a module on legal persons to respond to new areas of risk, to help countries identify critical gaps in their beneficial ownership frameworks and determine where enhanced safeguards are required to prevent their misuse for criminal purposes.
27. Global Witness found that despite the legal requirement that companies disclose the identities of people with significant control (PSC), over 300,000 companies simply reported that they have no PSC; 9,000 companies named a foreign company as their PSC; and nearly 7,000 companies listed a PSC who controls over 100 companies, suggesting a nominee owner. While this may be in formal compliance with the requirement that only those who own 25% or more of a company need to report, it is clearly in violation of the substantive definition of beneficial ownership as the natural person(s) at the end of the ownership chain, who ultimately owns or controls the company. See Global Witness (2019). Getting the UK's House in Order. <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/getting-uks-house-order/>.
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33. By 2020, all EITI countries have to ensure that companies applying for or holding a participating interest in an oil, gas or mining license or contract in their country disclose their beneficial owners. The EITI Standard also requires public officials—also known as Politically Exposed Persons—to be transparent about their ownership in oil, gas and mining companies. EITI standards also require that this information be publicly available and published in EITI reports and/or public registries.
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37. Firms receiving a one-off contract under EUR 100,000 in value are exempted.
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